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Hon. Dr. Sally Talbot
Hon Mr Nick Goiran
Hon. Mr Pierre Yang
Hon Mr Simon O'Brien
Legislation Committee
Parliament of Western Australia

CRICOS Provider Code: 00126G

28/07/2020

Dear Honourable Members,

Re: Children and Community Services Amendment Bill 2019 (WA)

Introduction

This submission by Professor Maria Harries and Dr Celine Harrison [i] is intended as a contribution to the Committee's deliberations regarding the policy of the Children and Community Services Bill 2019. In writing this response, we make overall comment on the contemporary context within which we are situated and take a 'helicopter view' of the legislation itself before identifying particular concerns.

Notwithstanding the reform agenda of the West Australian government to prevent entry into OOHC, a focus on prevention and early intervention and to reduce the rate of over-representation of Aboriginal children in OOHC (currently at 17.5 times it is the highest in the country), child protection in this State is in crisis. In Western Australia, increasing numbers of children are entering care, in 2015 it was 6.8 per 1000 and in 2019 it is 7.9 per 1000 with 5,875 children in care, rates of reunification are low and children and their families are increasingly struggling without enough tangible and material assistance to support their parenting and relationships. Furthermore, SNAIIC[1] has expressed concern that in the context of increasing numbers of children entering care, Western Australia of all the States and Territories, spends the lowest proportion of its child and family services budget on family support.

We acknowledge it has been a struggle in all jurisdictions to incorporate child safety and child and family well-being together as a cornerstone responsibility of the whole community. Underpinning this struggle is the nuanced and complex nature of child protection being conceptualised within a contemporary culturally sensitive, child and family well-being lens. Rather than adopting fundamental change to accommodate this contemporary lens, the legislative frameworks have been subject to only incremental changes since the original Child Welfare Act 1947 was repealed in 2004. We suggest that

[1] SNAICC. (2018). Family Matters. 2018 Snapshot Data. *Strong Communities Strong Culture Stronger Children*. https://www.familymatters.org.au/wp-content/uploads/2018/11/Family-Matters-Data-Snapshot-2018.pdf doi:https://www.familymatters.org.au/

the Bill as it is currently constituted has the effect of disaggregating the child from parents, family and community – despite the articulated alternative intent espoused in the Objects of the Act. It is the ongoing spirit of the historic lens that has contributed to the very high rate of child removal and the disenfranchising of individuals, parents and families on the basis of race and socio-economic status. Researchers are increasingly making the link between poverty and child protection intervention, now being referred to as the 'postcode lottery'[2].

The West Australian Commissioner for Children and Young People[3] makes the important observation that the majority of children who are removed come from families that experience long term, complex, entrenched problems associated with poverty, structural disadvantage and intergenerational trauma. The Commissioner makes the point that 'the state and its agencies should be held accountable and reasonable efforts should be made to support families and assist them to address their issues'. Quoting Article 4 of United Nations Convention of the Rights of the Child, the Commissioner suggests agencies 'should demonstrate how it has made reasonable efforts to provide services that will help families remedy the conditions that led to the children coming into care. In essence the burden of the proof should be with the State'. We suggest that consideration be given to include amendments that foreground the need to aid struggling families and to ease the social misery of parents and families so as to prevent children coming into care. To that end this submission will focus on those aspects of the Bill we consider could be re-configured to highlight an obligation to child and family well-being as well as child safety.

We note that in the First Reading to Parliament on 28th November 2019 the Minister stated:

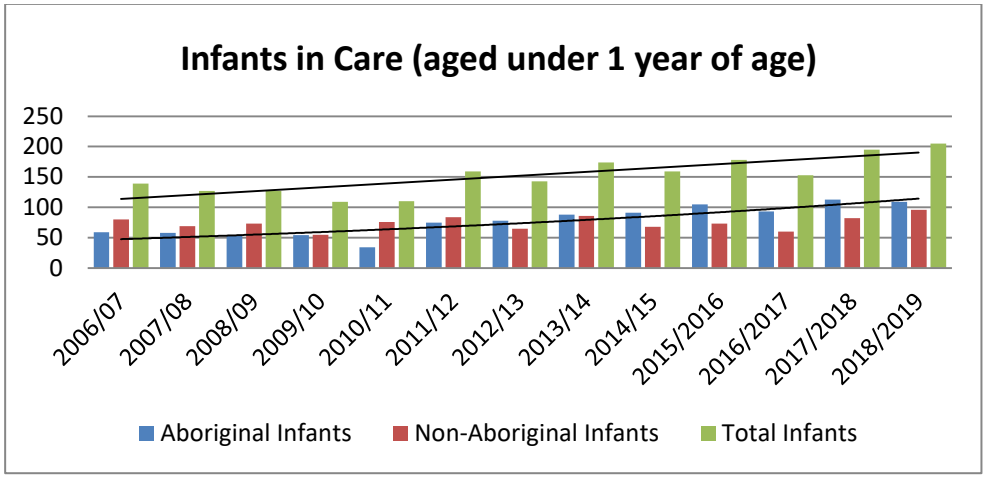
> Planning for stability and continuity in a child's living arrangements and relationships is a priority when a child enters the CEO's care… starting with reunification with the child's parents, long-term care with other members of the child's family, or care with another appropriate person…
>
> clear evidence showing that young people who have been in State care are at risk of experiencing poorer life outcomes, including inadequate housing or homelessness, poor education outcomes, long-term unemployment and difficulty with life skills, mental health issues, and drug and alcohol use.

We welcome the focus on planning for stability and note that stability begins with working with the birth parents. Relevant to planning for stability are the data relating to infants and very young children. If we look at the total numbers of children in care aged 1-4:

> 2018 there were 1034 children aged 1-4 of whom 163 left care (15%).
>
> 2019 there were 1136 children aged 1-4 in care of whom 134 left care (11%).

[2] Bilson, A. (2018, 6th August). More parents accused of child abuse than ever before *The Conversation*. Retrieved from https://theconversation.com/more-parents-accused-of-child-abuse-than-ever-before-100477

[3] Commissioner for Children and Young People. (2018). Issues Paper-Parent's rights and participation in child protection practice. https://www.ccyp.wa.gov.au/media/2978/issues-paper-parents-rights-and-participation-in-child-protection-practice-may-2018.pdf




A close look at the increasing numbers of infants being taken into care and the data that suggests the very low numbers being reunified, we agree that there is an urgency to give effect to the amendments to the legislation to meet the Government's objectives regarding stability, continuity, enhancing the child's relations with family, prevention, partnership, placement, participation and connection.

On Planning for Stability and Continuity

Our concern is that there are features of the Bill that weaken and undermine the principle of the primary role of parents, family and community. For instance S9 states:

> (b) the principle that the preferred way of safeguarding and promoting a child's wellbeing is to support the child's parents, family and community in the care of the child;

We suggest that the word "**preferred**" allows for a very loose form of discretion and it should be replaced by a word more suggestive of '**obligation'** and in line with the UN Declaration of the Rights of the Child.

In addition, there is a need for stronger enabling processes either in legislation or policy to give effect to the following:

> (g) the principle that planning for the care of a child who is in the CEO's care should occur as soon as possible in order to promote long-term stability for the child and should, as soon as possible, include consideration of whether it is **appropriate to work** towards returning the child to the child's parents;

. Although we also note that the phrase 'whether it is appropriate to work' does not imply sufficient stringency and rigor and undermines the child emotional bonds, need for nurturance, belongingness and identity. We speculate that a focus on ensuring that the needs of vulnerable children and their families are foregrounded how it might be possible to justify why it might not be appropriate to do this work.

Written proposal

The amendments which affect the written proposal that must be presented to Court of the proposed arrangements for the well-being of the child when applying for an order, time limited an extension or an order till 18 are worded such as to allow practice to default to long term orders and a diminishing of an obligation to reunify the child with the family:

> (4) A proposal under section 143 for a protection order (time-limited) must —

(a) outline proposed arrangements for working towards the child being returned to or placed with the child's parents; or

(b) if the CEO is of the opinion that such arrangements would be contrary to the best interests of the child or not practicable — contain a **brief** explanation of the reasons for the opinion.

We suggest that 'a **brief explanation'** is unacceptable and that the Court needs to be **provided with evidence of a high standard and that reasons for why a child is not to be** reunified with parents should be subject to a demanding test.

Accountability

Stakeholders who have made submissions regarding the amendments to this Bill have generally argued for a rights and social justice approach and to this end we argue that accountability and judicial oversight for the way the legislation is implemented needs to be strengthened. We further argue that the provision of adequate advocacy and legal representation is a necessary feature of a child protection system that is intended to serve the best interests of the child and provide fair and humane care to vulnerable families. Parents are able to obtain a duty lawyer service at the Children's Court. The provision of Legal Aid if the applicants pass a merit test is for a limited period of time, usually 4-5 hours. As a result, parents do not have representation for the whole cycle of legal proceedings and if they oppose the order sought by the DoCs and wish to proceed to trial, parents have to represent themselves. Distressed parents and children are forced to engage in a harshly adversarial process with serious power imbalances, in court they face a well-resourced, legalistic, government department with a vested interest in having its decisions vindicated. This is extremely difficult for families who are already significantly distressed and terrified and for whom the decision may have lifelong catastrophic consequences, no less significant than the loss of liberty for someone facing a criminal court. As a matter of urgency legal representation for parents and children must be seen as a right and Legal Aid resourced accordingly.

Conclusion

We are mindful that the scoping of the amendments to the legislation was limited to some key issues and that this response goes beyond that scope. While it is aspirational to suggest this, it would be of value to note the future need to undertake a full refresh of the legislation using a contemporary cultural lens.

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[i] About the authors:

Maria Harries AM PhD is Senior Honorary Research Fellow at The University of Western Australia and Adjunct Professor at Curtin University. She has been an academic/practitioner for around fifty years and has worked extensively as a consultant to jurisdictions on child protection matters.

Dr Celine Harrison has worked with the statutory child protection agency (then known and the Family and Children's Services) and in the tertiary hospital sector, at the Princess Margaret Hospital for Children (1986-1993) and then in senior positions and as Head of Social Work Department at King Edward Memorial Hospital for Women (1993-2012). Currently she has been doing some pro bono work for the Family Inclusion Network of WA (FINWA) assisting mothers to do responding affidavits and is a member of the Protection and Care Advocacy Network.